

**REMARKS/ARGUMENTS**

Entry of this response and reconsideration and allowance of the above-identified patent application are respectfully requested. Please note that a supplemental information disclosure statement (IDS) has been filed concurrently with the present response. The Examiner is respectfully requested to consider and initial the cited references. A request for an extension of time is submitted herewith.

Claims 1-35 and 49 are pending. By this amendment, claims 1, 3, 4, 11, 17, 18, 28, 33, 34, and 49 are amended. No claims have been canceled or added. No new matter is added. Upon entry of this amendment, claims 1- 35 and 49 will be pending.

Applicant respectfully submits that, upon entry of the subject amendment, the application will be in condition for allowance. Applicant, thus, respectfully requests consideration of the above amendment and following remarks.

Claims 1-35 and 49 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publ. No. 2003/0021388 to Starr et al. ("Starr") in view of U.S. Publ. No. 2004/0037317 to Zalitzky et al. ("Zalitzky").

Applicant would like to thank Examiner Qureshi for conducting a telephonic interview with Applicant's representative. Applicant's representative and Examiner Qureshi discussed the prior art in comparison with the claims. The interview was helpful in facilitating and progressing the prosecution of the present application.

The present invention is directed to a voice over internet protocol (VoIP) test device and method. In one example, the device includes a user interface, a transceiver configured to communicate with the VoIP network, a memory storing a test algorithm, a codec, and a media access controller (MAC). The device may also include a processor in communication with the user interface, transceiver, codec, media access controller, and memory and configured to execute the test algorithm to cause the transceiver to communicate with the VoIP network to test one or more of jitter, packet loss, and latency of the VoIP network.

Independent claim 1 (and similarly independent claims 28 and 49) has been amended to require a codec, a MAC, and testing of at least one of jitter, packet loss,

and latency of the VoIP network. Claims 3, 4, and 17 have been amended to be consistent with the amended independent claim 1. Claims 11 and 34 have been amended to require testing of at least two of jitter, packet loss, and latency (or signal delay) of the VoIP network. Claims 18 and 33 have been amended to require testing of each of jitter (or packet jitter), packet loss, and latency of the VoIP network claim.

In response to the that statement that claims 26 and 27 are substantially duplicative, Applicant cancelled claims 27 in the amendment filed September 6, 2007.

Independent claims 1, 28 and 49 stand rejected as being unpatentable over Starr in view of Zalitzky. Starr is directed to a system for determining whether a telephone line is acceptable for use with a DSL service (XLDs services). See abstract. More specifically, Starr is testing the transmission line (wires) – not the network – to determine whether the connection would support DSL. (See paragraph 22). The tests measure electrical characteristics of the transmission lines (see paragraph 23). Starr is attempting to find out if the transmission lines will support high speed DSL service or not. A text search revealed that Starr includes no discussion (and no mention) of VoIP, voice over IP, etc.

Zalitzky is directed to a device for providing multimedia communications (e.g., telephone, internet access, etc.) via power lines. That device provides VoIP. A text search demonstrated that Zalitzky does not include the terms test device, testing, test, measurements, etc. The device of Zalitzky is simply a multifunction modem that can provide VoIP and is not a test device.

#### **Response to the assertions of office Action**

The Office action asserts (page 4) that the Starr discloses testing a VoIP network because the XDSL modem of Starr could be used as a device to test a VoIP network. Applicant submits that it is possible to use a high speed modem to form part of a device for testing a VoIP network. However, because a device discloses a high speed modem does not mean that it also discloses testing a VoIP network.

To extrapolate this logic, all airplanes today include a microprocessor. However, because a reference discloses a microprocessor does not mean it also

discloses an airplane. Consequently, it is inappropriate to infer that Starr discloses VoIP testing.

**Thus, neither reference discloses testing a VoIP network, which is one of the fundamental concepts of the present invention and is present in each independent claim.** Starr discloses simply testing the transmission line to determine if DSL can be provided via the transmission lines. Zalitzky does not disclose testing.

Applicant respectfully submits that the converter 44 of Starr is not a codec (as required by all claims as amended) as asserted. A codec is used to encode and decode data signals to/from the network and is different from an A to D converter (that simply converts analog to digital).

Next, Applicant refutes the conclusion of the office action that the controller 30 of Starr is a media access controller (MAC) as required by all claims (as amended). A MAC operates on layer 2 (the data link layer) in the 7 layer OSI model. In contrast, the controller 30 of Starr is a general programmable controller. In addition, to the extent Zalitzky discloses a MAC or codec, it fails to disclose incorporating such components into any test device and, again, neither device teaches testing a VoIP network.

Finally, the independent claims have been amended to also include testing at least one of (or all of for claim 49) jitter, packet loss, and latency of the VoIP network. Neither Star nor Zalitzky disclose such testing. Applicant submits that neither reference discloses nor would have a need to do such testing.

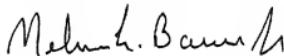
In view of the foregoing, it is respectfully submitted that the claimed invention is patentably distinguished over the asserted prior art references and that the application stands in condition for allowance. It is respectfully requested that the application be reconsidered, that all pending claims be allowed, and that the application be passed to issue.

**CONCLUSION**

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact Mel Barnes at (410) 757-6643, to discuss any other changes deemed necessary in a telephonic interview.

Authorization is hereby granted to charge any deficiencies in fees, including any fees for extension of time under 37 C.F.R. §1.136(a), to Deposit Account 50-3970. Please credit any overpayment in fees to the same deposit account.

Respectfully submitted,



Melvin L. Barnes, Jr.  
Registration No. 38,375

Date: March 13, 2008

Capital Legal Group, LLC  
1100 River Bay Road  
Annapolis, MD 21409  
Telephone: (410) 757-6643  
Facsimile: (202) 318-7456